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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 611 OF 2004

M/s. Kesar Enterprises Ltd. .. Appellant

Versus

The Commissioner of Income Tax .. Respondent

Ms. Asifa Khan for the Appellant.

Mr. A.S. Rao for Respondent.

CORAM: F.I. REBELLO &
J.P.DEVADHAR, JJ.
DATED: AUGUST 06, 2007

P.C.:

. The substantial question Nos. 1 and 2 reads as under :

"1. Whether on the facts and in the circumstances of the case the ITAT was right in disallowing the claim of the Appellant for depreciation amounting to Rs.88,689/- on the guest house u/s. 37(4) of the Act?

2. Whether on the facts and in the circumstances of the case as well as in law the ITAT was right in disallowing the aggregate payment of Rs.7510/- made to M/s. Kumar Architects in connection with the drawing of the guest house building and the

expenditure incurred of Rs.7,61,192/- as repairs of the guest house u/s.37(4) of the Act instead of allowing the same u/s. 30 of the Act?"

. Parties agree that these questions are covered by the judgment reported in 278 ITR 546 in favour of the revenue. In the light of that, the questions are answered in the affirmative in favour of the revenue and against the assessee.

. Question of law Nos. 3 and 4 read as under :

"3. Whether on the facts and in the circumstances of the case as well as in law the Tribunal was required to pass a speaking order in respect of the interest charged u/s.234B and 234C of the Act?

4. Whether on the facts and in the circumstances of the case the ITAT was right in charging interest under section 234B and 234C of the Act when the income of the Appellant is computed u/s.115J of the Act?"

. The same are covered by the judgment of the

Supreme Court reported in 284 ITR 434 in favour of the assessee.

. Considering the fact that the question Nos. 1 and 2 have been held in favour of the revenue, the appeal by the assessee on these two questions will have to be rejected. In so far as question of law Nos. 3 and 4 are concerned, in the light of the fact that said questions are answered in favour of the assessee, appeal on those questions of law will have to be allowed.

. Appeal accordingly disposed of.

(J.P.DEVADHAR, J.) **(F.I.REBELLO, J.)**